### § 1008.15 Facts subject to advisory opinions.

(a) The OIG will consider requests from a requesting party for advisory opinions regarding the application of specific facts to the subject matters set forth in § 1008.5(a) of this part. The facts must relate to an existing arrangement, or one which the requestor in good faith plans to undertake. The plans may be contingent upon receiving a favorable advisory opinion. The advisory opinion request should contain a complete description of the arrangement that the requestor is undertaking, or plans to undertake.

(b) Requests presenting a general question of interpretation, posing a hypothetical situation, or regarding the activities of third parties do not qualify as advisory opinion requests.

(c) Advisory opinion request will not be accepted, and/or opinions will not be issued when—

(1) The request is not related to a named individual or entity;

(2) The same, or substantially the same, course of action is under investigation, or is or has been the subject of a proceeding involving the Department of Health and Human Services or another governmental agency; or

(3) An informed opinion cannot be made, or could be made only after extensive investigation, clinical study, testing, or collateral inquiry.

[62 FR 7357, Feb. 19, 1997, as amended at 63 FR 38324, July 16, 1998]

### § 1008.18 Preliminary questions suggested for the requesting party.

(a) The OIG may establish and maintain a set of questions corresponding to the categories of opinion subject matter as set forth in § 1008.5(a) of this part as appropriate. The questions will be designed to elicit specific information relevant to the advisory opinion being sought; however, answering the questions is voluntary.

(b) Questions the OIG suggests that the requestor address may be obtained from the OIG. Requests should be made in writing, specify the subject matter, and be sent to the headquarter offices of the OIG.

(c) When submitting a request for an advisory opinion, a requestor may answer the questions corresponding to the subject matter for which the opinion is requested. The extent to which any of the questions is not fully answered may effect the content of the advisory opinion.

[62 FR 7357, Feb. 19, 1997, as amended at 63 FR 38324, July 16, 1998]

## Subpart C—Advisory Opinion Fees

### § 1008.31 OIG fees for the cost of advisory opinions.

(a) *Responsibility for fees.* The requestor is responsible for paying a fee equal to the costs incurred by the Department in responding to the request for an advisory opinion.

(b) *Initial payment.* A request for an advisory opinion must be accompanied by a check or money order payable to the Treasury of the United States for $250. This initial payment is non-refundable.

(c) *Calculation of costs:* Prior to the issuance of the advisory opinion, the OIG will calculate the costs incurred by the Department in responding to the request. The calculation will include the costs of salaries and benefits payable to attorneys and others who have worked on the request in question, as well as administrative and supervisory support for such person. The OIG has the exclusive authority to determine the cost of responding to a request for an advisory opinion and such determination is not reviewable or waiveable.

(d) *Agreement to pay all costs.* (1) By submitting the request for an advisory opinion, the requestor agrees, except as indicated in paragraph (d)(4) of this section, to pay all costs incurred by the OIG in responding to the request for an advisory opinion.

(2) In its request for an advisory opinion, the requestor may request a written estimate of the cost involved in processing the advisory opinion. Within 10 business days of receipt of the request, the OIG will notify in writing of such estimate. Such estimate will not be binding on the Department, and the actual cost to be paid may be higher or lower than estimated. The time period for issuing the advisory opinion will be tolled from the time the OIG notifies the requestor of the estimate until the OIG receives